No. 94-68 (4)

MOTION FILED

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In The

Supreme Court of the United States

October Term, 1994

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS; JEFFREY B. PINE, in his capacity as Attorney General of the State of Rhode Island; TOWN OF CHARLESTOWN; ROBERT J. SCHEIDLER, CHARLES W. BECK, CHARLENE Q. DUNN, FORRESTER C. SAFFORD, and J. MICHAEL DOWNEY, in their capacity as Members of the Charlestown Town Council,

Petitioners,

vs.

NARRAGANSETT INDIAN TRIBE, GEORGE V. HOPKINS, in his capacity as Chief Sachem, and ANTHONY DEAN STANTON, in his capacity as First Councilman,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF SENATOR CLAIBORNE DeB. PELL AND SENATOR JOHN H. CHAFEE, AMICUS CURIAE IN SUPPORT OF PETITIONERS

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On Petition For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONERS

Now come Claiborne DeB. Pell, Senior United States Senator from Rhode Island, and John H. Chafee, Junior United States Senator from Rhode Island, and move for leave, pursuant to Rule 37.2, to file a brief *amicus curiae* in

support of the petition for certiorari. Deputy Attorney General of Rhode Island Thomas M. Dickinson, counsel of record for the Petitioners, has consented to the filing of this brief, but the Respondents have declined to consent.

Interest of the Amici. The amici are the United States Senators from Rhode Island. The issue presented in this case is one of importance to the State of Rhode Island because it involves the interpretation of particular statutes and their effect upon Rhode Island. The amici were members of the United States Senate in 1978 when the Rhode Island Indian Land Claims Settlement Act (RICSA) 25 U.S.C. § 1701, *et seq.*, was enacted, and were also in the Senate when the Indian Gaming Regulatory Act (IGRA) 25 U.S.C. § 2701, *et seq.*, was enacted. With regard to IGRA, the amici actively participated in the floor debates and, in fact, engaged in a floor colloquy that elucidated the intended meaning of IGRA as it related to Rhode Island. The Court of Appeals below declined to make use of that floor colloquy in interpreting IGRA. As Senators from Rhode Island, the amici have an interest in the fair and accurate interpretation of both RICSA and IGRA. As members of the United States Senate, moreover, amici have an interest in the proper judicial use of legislative history as an interpretive aid.

The proposed *amicus curiae* brief has been printed herewith in accordance with Rule 37.2.

WHEREFORE, amici respectfully pray for leave to file the attached *amicus curiae* brief in support of the Petitioners.

RESPECTFULLY SUBMITTED
Amici curiae

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QUESTION PRESENTED FOR REVIEW

Whether the United States Court of Appeals for the First Circuit erred when it:

A. Held that the Indian Gaming Regulatory Act, which authorizes gambling on certain Indian lands, impliedly repealed portions of the pre-existing Rhode Island Indian Claims Settlement Act, which implemented a negotiated tribal-state compact between the State of Rhode Island and the Narragansett Indian Tribe; and

B. Refused to consider explicit statements in the Indian Gaming Regulatory Act's legislative history – to the effect that Congress did not intend the Act alter the Rhode Island Indian Claims Settlement Act.

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Now come Claiborne DeB. Pell, Senior United States Senator from Rhode Island, and John H. Chafee, Junior United States Senator from Rhode Island, amicus curiae, and pray that this court grant the petition for a writ of certiorari to the United States Court of Appeals for the First Circuit, to review said court's erroneous judgment.

STATEMENT OF THE CASE

The amici adopt the Statement of the Case as set forth in the Petition.

INTEREST OF THE AMICI

The amici are the United States Senators from Rhode Island. Together, amici have nearly fifty years of service in the United States Senate. The amici were members of the United States Senate in 1978 when the Rhode Island Indian Land Claims Settlement Act (RICSA) 25 U.S.C. § 1701 *et seq.*[1], was enacted, and were also in the Senate when the Indian Gaming Regulatory Act (IGRA) 25 U.S.C. § 2701, *et seq.* (Pet. App. § E, at App. 85-93), was enacted. With regard to IGRA, the amici actively participated in the floor debates and, in fact, engaged in a floor colloquy that elucidated the intended meaning of IGRA as it related to Rhode Island. The Court of Appeals below declined to make use of that floor colloquy in interpreting

[1] Pertinent portions of this statute have been reproduced at Petitioners' Appendix section J, page App. 117-18 of the Petition, hereinafter cited as "Pet. App. § ___, at App. ___."

IGRA. As Senators from Rhode Island, the amici have an interest in the fair and accurate interpretation of both RICSA and IGRA. As members of the Senate, moreover, amici have an interest in the proper judicial use of legislative history as an interpretive aid.

SUMMARY OF ARGUMENT

Legislative history is an important side in understanding the meaning of statutory language. Historically, courts have relied upon legislative history as a basis for divining legislative intent. In this case, the Court of Appeals failed to credit pertinent portions of legislative history, particularly Senate floor debates in which amici actively participated. The petition for certiorari ought, therefore, to be granted to review the Court of Appeals' decision.

ARGUMENT

The Use of Legislative History Generally. Legislative history is variously regarded as including reports of committees, successive drafts of bills, and floor debates. *See generally* 2A *Sutherland on Statutory Construction*, §§ 48.01 *et seq.* (Singer 5th ed. 1992). Of these, floor debates generally immediately precede passage and therefore represent the final stage of the process that transforms a bill into a law. In a deliberative legislative body, floor debates serve several salutary functions. First, sponsors of a bill are given an opportunity, before the assembled legislative body, to explain the purpose and meaning of the bill's

provisions. Individual legislators who oppose or support the bill have a forum for expressing their views and explaining them to colleagues and constituents. Senators and Representatives who are undecided may listen to such discussions and, based upon the arguments that they hear, come to a decision on how they will vote. Finally, the give-and-take of floor colloquy affords an opportunity for legislators to inquire of the sponsor as to the effect of particular aspects of the proposed legislation.

Of course, floor debates and discussions are not part of the statute as written in its final form. Legislators, however, regard such debates as a meaningful and integral part of the legislative process. In performing their legislative duties, legislators undoubtedly place heavy reliance upon a sponsor's representation regarding the meaning of a particular provision. These representations and exchanges are memorialized in floor debate and colloquy. Because of the critical importance of these exchanges to legislators, courts must not minimize or ignore such exchanges in interpreting legislative enactments.

Justice Stephen Breyer's recent article on statutory construction identifies five possible reasons for judicial resort to legislative history as an aid to legislative interpretation:

(1) avoiding an absurd result;

(2) preventing the law from turning on a drafting error;

(3) understanding the meaning of specialized terms;

(4) understanding the "reasonable purpose" a provision might serve; and

(5) choosing among several possible "reasonable purposes" for language in a politically controversial law.

Breyer, *On the Uses of Legislative History in Interpreting Statutes*, 65 S. Cal. L. Rev. 845, 860-61 (1992). If the judiciary discounts the use of committee reports and floor debates as aids to interpretation, Justice Breyer points out, "the technical quality of statutory law is likely to deteriorate significantly." *Id.* at 873. This is so, at least in part, because discounting legislative history would necessarily reduce the relevance of public hearings and floor debates, leading inevitably to change in legislative process. *Id.* at 873. Abandoning the use of legislative history, Justice Breyer cautions, is contrary to "the judiciary's important objective of helping to maintain coherent, workable statutory law . . . " *Id.* at 874.

The use of legislative history is not of recent origin. *The Federalist Papers* – attributed to James Madison, John Jay, and Alexander Hamilton and revered as a signal guide to the meaning of the Constitution – are actually part of the legislative history of the Constitution. Indeed, the Constitution itself specifically imposes upon each House the duty to "keep a journal of its proceedings, and from time to time publish the same . . . " U.S. Const. Art. I, § 5, cl. 3. The presence of this mandate in the text of the Constitution itself strongly suggests that the drafters recognized the importance of recording Congressional proceedings for later use in giving proper contextual meaning to Congressional enactments.

Of course, a jurisprudence based upon the doctrine of *stare decisis* is well acquainted with the notion that words must be placed in their proper context. The "holding" in any case decided by this Court, strictly speaking, is limited to the Court's judgment. The Court's opinion, of course, supplies the factual, historical, and logical context for the judgment; these elements are, accordingly, essential to a later court's application of the holding. Indeed, a court attempting to apply the holding to later facts may well rely upon concurring and dissenting opinions as tools that elucidate the meaning of the holding itself. On occasion, majority and dissenting opinions supply the reader with what is, in essence, vigorous "debate" that significantly illuminates the reasoning underlying the Court's holding. *Compare, e.g., Dolan v. City of Tigard*, 114 S. Ct. 2309, 2322 (1994) (Stevens, J., dissenting) *with id.* at 2316 n.15 (Chief Justice Rehnquist's majority opinion response to points raised in Justice Stevens' dissent). Although only the holding has binding *stare decisis* effect upon later courts, the remaining elements of the Court's opinions are frequently utilized to place the holding in its proper context and thereby to achieve complete understanding of it.

Thus, whether interpreting legislative enactments or applying the doctrine of *stare decisis*, an appellate court must frequently rely upon a variety of sources to elucidate the meaning of the text before it. In interpreting IGRA, however, the Court of Appeals in this case specifically refused to give appropriate weight to the statute's legislative history. Amici, as integral participants in the IGRA floor debate, agree with Petitioners that the Court of Appeals erred.

Floor Debates Regarding IGRA. As set forth in the Petition, the amici actively participated in the United States Senate's floor debates leading up to the passage of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701, et seq. (Pet. App. § E, at App. 85-93). In particular, when the Senate first took up this bill on September 15, 1988, the amici engaged in a floor colloquy with the principal sponsor of the bill, Senator Daniel Inouye. The purpose of that colloquy was, obviously, to explore the potential impact of IGRA upon the pre-existing Rhode Island Indian Land Claims Settlement Act (RICSA), 25 U.S.C. § 1701, *et seq.* (Pet. App. § J, at App. 117-18). As can readily be seen from the text of the debate, Senator Pell requested that specific language in an early draft of IGRA be removed, with the explicit understanding that the language was unnecessary because IGRA did not apply to Rhode Island:

> Mr. PELL. Mr. President, I would like to thank the managers of S.555, the Indian Gaming Regulatory Act, and particularly the chairman of the Select Committee on Indian Affairs [Mr. Inouye], for their hard work and patience in achieving a consensus on this important measure.
>
> In the interests of clarity, I have asked that language specifically citing the protections of the Rhode Island Claims Settlement Act (Public Law 95-395) be stricken from S.555. I understand that these protections clearly will remain in effect.

> Mr. INOUYE. I thank my colleague, the senior Senator from Rhode Island [Mr. Pell], and assure him that the protections of the Rhode Island Claims Settlement Act (P.L. 95-395), will remain in effect and that the Narragansett Indian Tribe clearly will remain subject to the civil, criminal, and regulatory laws of the State of Rhode Island.
>
> Mr. CHAFEE. Mr. President, I too would like to thank the chairman [Mr. Inouye] and members of the Select Committee on Indian Affairs for their cooperation and assistance. The chairman's statement makes it clear that *any high stakes gaming, including bingo, in Rhode Island will remain subject to the civil, criminal and regulatory laws of our State.*

Pet. App. § G., at App. 102-03, 134 Cong. Rec. S12650 (daily ed. Sept. 15, 1988) (emphasis added).

Notwithstanding the clarity of legislative purpose evinced in this colloquy, the Court of Appeals concluded that IGRA constituted an implied repeal of RICSA as it relates to gambling on lands of the Narragansett Indians in Rhode Island. The Court of Appeals found that it was "unable to accept the colloquy at face value. In the game of statutory interpretation, statutory language is the ultimate trump card." Pet. App. at 28. The Court of Appeals correctly recognized that plain language of any statute

will govern over inconclusive or contrary legislative history. In this case, however, the Court of Appeals regarded IGRA as an "implied repeal" of RICSA; the very use of the term "implied" denotes that the language of IGRA on this point was not at all plain and therefore needed some interpretation. On such a state of affairs, amici submit, statements made during floor debate are an essential tool in determining legislative intent. Indeed, the importance of floor debate as an organic part of a statute's legislative development is confirmed by this Court's frequent citation to such debates as an aid to interpretation. *See, e.g., Wilder v. Virginia Hospital Association,* 496 U.S. 498 n.13 (1990) (relying in part on Sen. Boren's statements during floor debate as interpretive aids to "Boren Amendments" regarding medicaid reimbursement formulas); *Brock v. Pierce County,* 476 U.S. 253 (1986) (statement of principal sponsor during floor colloquy, when consistent with other legislative history, provides "evidence of Congress' intent"); *Regan v. Wald,* 468 U.S. 222 (1984) (relying on floor statement by relevant Subcommittee Chairman as interpretive aid in construction of amendments to Trading With Enemy Act). Some examples of this Court's use of legislative history this past Term include *Hagen v. Utah,* 114 S. Ct. 958 (1994), where the Court interpreted statutes involving Indian reservations, and *Landgraf v. U.S.I. Film Products,* 114 S. Ct. 1483 (1994), interpreting the 1991 amendments to Title VII.

As the Petitioners have pointed out, and as Senior Judge Coffin reasoned in dissent, the Court of Appeals' interpretation is demonstrably contrary to the intended purpose of IGRA, Pet. App. 47-52 (Coffin, J., dissenting).

After analyzing the floor debates and pertinent committee reports, Senior Judge Coffin concluded that if the court "assign[ed] the proper weight to the legislative history, I think it unavoidable that we would have concluded that the Gaming Act had effected no implied repeal of the Settlement Act." Pet. App. 52 (Coffin, J, dissenting).

CONCLUSION

Having actively participated in the IGRA debates, *amici* submit that Senior Judge Coffin's dissent more accurately interprets the meaning and import of IGRA relative to Rhode Island. The Court of Appeals erred in failing to credit the pertinent legislative history. The writ of certiorari ought, therefore, to be granted to review the Court of Appeals' decision.

Respectfully submitted

Amici curiae,

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